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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,562	02/17/2006	Hans Hoogland	T7093(C)	6500

201 7590 07/22/2009  
UNILEVER PATENT GROUP  
800 SYLVAN AVENUE  
AG West S. Wing  
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER
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SOOHOO, TONY GLEN

ART UNIT	PAPER NUMBER
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1797

MAIL DATE	DELIVERY MODE
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07/22/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/568,562	<b>Applicant(s)</b> HOOGLAND, HANS	
	<b>Examiner</b> Tony G. Soohoo	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 5-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. PCT/EP2004/008255, filed on 21 AUG 2003.

### ***Election/Restrictions***

2. Applicant's election with traverse of the election of Group I in the reply filed on 6/11/2009 is acknowledged. The traversal is on the ground(s) that the claims are novel and inventive over the evidence of the art US 6,280,075 to CADEO. This is not found persuasive because the statement fails to provide support for such allegation, and does not specifically point out the common special technical feature between the groups which advances over the prior art.

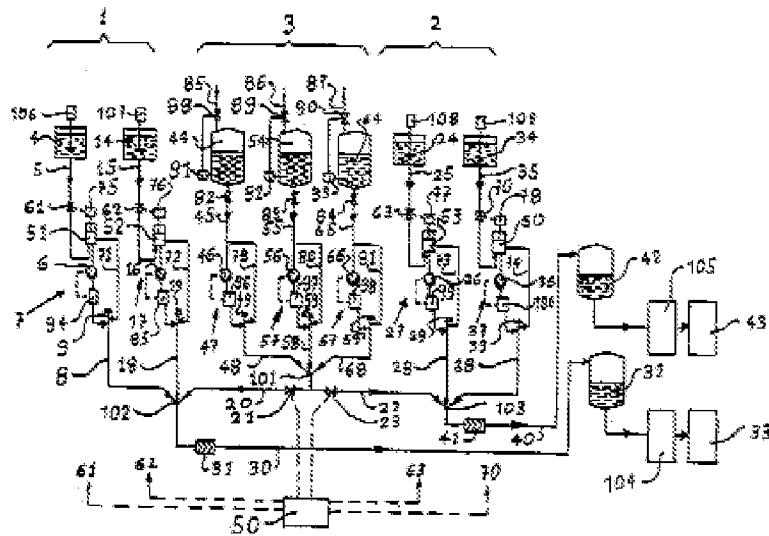
The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by CADEO 6,280,075 (cited on PTO 1449).

The CADEO reference discloses an apparatus for preparing and dispensing a component with one or more post-added ingredients, the apparatus comprising a frame comprising :



- a source unit (3) comprising one or more component reservoirs (44, 54, 64);
- selection means for selecting the desired components and/or their ratio (47, 57, 67)
- a source unit (1 or 2) comprising component reservoirs for post added ingredients (4, 14; or 24, 34) wherein the post added ingredients are arranged in at least two families (one family 1 while the other family is 2);
- selection means for selecting the desired post-added ingredients (7, 17, 27, 37);
- processing means (102, 103) suitable for mixing the components from the component reservoirs and the post-added ingredients;
- a dispensing unit (30, 40) for dispensing the resulting composition of ingredients,

Regarding the clause, *“wherein each family of post-added ingredients is composed such that each member thereof is highly similar in colour, taste and consistency such that any residue which may remain in the processing means will not have an adverse effect on the perception of the product by the end-user.”* and to the particular type of materials (i.e. oil and water) to be utilized in the apparatus claims.

Art Unit: 1797

Such language has been fully considered, however is afforded no structural distinction to the claims. "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim." *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). "[A]pparatus claims cover what a device *is*, not what a device *does*" (emphasis in original) *Hewlett-Packard v. Bausch & Lomb Inc.* 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

Regarding claim 2, the dispensing unit is suitable to be operated use in a batch process and dispensing only one product at a time, if the apparatus is operated in such a manner.

Regarding claim 3, note a processing means comprises a pre-mixer unit (3).

Regarding claim 4 , note there is a dedicated mixer (102, 103) for each family of post-added ingredients (1, 2).

Regarding claim 9, the phrase "*wherein the ratio of the volume of the product that is dispensed to the volume of the mixing means is at least 5:1.*" is directed to the operation of the device and is not afforded any further structural distinction within the language and construction of apparatus claims. *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). *Packard v. Bausch & Lomb Inc.* 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 8AM-5PM, Tues-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1797

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tony G Soohoo/  
Primary Examiner, Art Unit 1797

Tony G Soohoo  
Primary Examiner  
Art Unit 1797

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